

MARINE SAFETY MANUAL

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CHAPTER 3: EVALUATION OF CHARACTER ISSUES AND VIOLATIONS OF LAW

A. Character And Violations Of Law.

This chapter deals with the policies for rejecting applications for all Merchant Mariner's Documents (MMDs), licenses and Certificates of Registry (CORs) when there is substantial evidence that the criminal convictions, character or habits of life warrant the rejection. The evaluator must consider all aspects of the applicant's record. The applicant's record of convictions are our best source to determine if the applicant should be rejected. However, in some cases, the evaluator may have to make a determination from records other than convictions. There are few simple answers to whether an applicant is qualified. The evaluator should use any source available to determine the qualification of an applicant. See 46 CFR 10.103 and 12.01-6, for the court orders that are considered a conviction for the purposes of this chapter.

1. 46 U.S.C. Section 7101 authorizes the Secretary of the department or agency under which the Coast Guard is operating to issue licenses to applicants found qualified as to age, experience, professional qualifications, physical fitness, character and habits of life. In addition, the Coast Guard may issue a Certificate of Registry to applicants found qualified as to experience, knowledge, skill and character. 46 U.S.C. Section 7503(b)(1) provides that a license, COR or MMD application may be denied to any individual who, within ten years before making application, was convicted of violating a dangerous drug law of the United States. 46 CFR 10.201 and 46 CFR 12.02-4 address denial of license, COR, and MMD applications based upon narcotic convictions. Assessment periods are minimum and maximum periods of time over which the OCMI will consider a conviction(s) in the evaluation of an applicant for merchant mariner's credentials. Definitive guidelines for assignment of assessment periods to be used for the evaluation of applicants with various criminal and driving convictions were published in a Final Rule on December 19, 1995. [60FR65478 dtd December 19, 1995, "National Driver Registration and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents"].
2. 46 U.S.C. Section 7503 provides that an applicant may be denied a license or COR or MMD if they have been a user of, or addicted to, a dangerous drug, unless the applicant provides satisfactory proof of cure. Dangerous drugs are defined in 46 U.S.C. 2101 and mean a narcotic or controlled substances including marijuana.
3. Before Congress enacted the Oil Pollution Act of 1990 (OPA-90), (Pub. L. 101-380), an individual who applied for a license, COR or MMD was not required to provide the Coast Guard with National Drivers Register (NDR) information. OPA-90 amended laws which now require the Coast Guard to review the applicant's driving record for certain NDR listed traffic offenses before issuing a license, COR or MMD. These offenses include operation of a motor vehicle while under the influence of, or while impaired by, alcohol or a controlled substance; any traffic violation(s) arising in connection with a fatal traffic accident, and reckless driving, or racing on the highways. Although an

individual's motor vehicle record may not be directly related to his or her maritime career, a record of alcohol or drug related, or other motor vehicle offense(s) indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment. Information received from the NDR must be made available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying an application for a license, COR, or MMD.

4. Persons who have a record of certain criminal convictions may be viewed as lacking appropriate character and hence denied the privilege to act as a licensed officer or MMD holder. Unacceptable character traits or habits of life may be demonstrated by criminal convictions for murder, assault, rape, theft, child molestation and related crimes, or through demonstrated repeated disregard for the rules and regulations of an orderly society (convictions for disorderly conduct, reckless driving and similar violations of law). Due to complex combinations of convictions and other variables, a simple matrix of acceptable versus unacceptable criminal backgrounds is not practicable. Each applicant must be evaluated individually to determine their qualification for a license, COR, or MMD. Factors to be considered should include at least the following:
 - a. Types of crimes and the number of convictions.
 - b. Recency of convictions.
 - c. Age at which the crimes were committed.
 - d. Evidence of frequent and repeated criminal activity (includes misdemeanors and/or felonies).
 - e. The extent of the connection between the crime and the license or COR and the safe and legal operation of a vessel.
 - f. Character references from responsible persons in extenuation and mitigation.
 - g. The length of time spent since release from incarceration or supervised parole.
5. Any applicant who holds or is eligible to renew a license, COR or MMD, who has been convicted of a drug related crime, or has admitted to using or been reported to have used narcotics, or has been convicted of an NDR related offense within the past three years will be referred to the Senior Investigating Officer (SIO) for an investigation prior to processing the applicant's requested transaction.
6. Evaluating the Crime(s): See section 3.C of this volume.
7. Evaluating Multiple Convictions: See section 3.C of this volume. Multiple convictions may indicate a history of flagrant disregard for the rules of an orderly society. In such cases, the minimum assessment period will be the longest minimum in the regulations, based upon the applicant's convictions. The maximum assessment period will be the longest shown in the regulations.
8. OCMi Discretion: Each case must be evaluated individually. The reason for any assessment period must be well documented in the applicant's file.

B. Guidelines For Rejecting Fraudulent Applications.

1. Original Applications.

Failure to complete an initial application truthfully can lead to its consideration as fraudulent and to the voiding of any license, certificate, or document issued under such an application ab initio (as if never issued). When it has been determined that statements in an application were fraudulently made and not merely the result of unintended misstatement or misunderstanding, the applicant shall be required to wait 12 months before he/she can reapply. If it is later determined that an initial license, COR or MMD, was issued based on fraudulent information, that license, COR, or MMD should be considered "null and void" and must be returned to the REC. After the assessment period expires, the applicant must start the application process from the beginning. When a license, COR or MMD is denied or declared "null and void", the OCMI shall advise the holder of the appeal rights contained in 46 CFR 10.204 and/or 46 CFR 12.02-25.

2. Subsequent Applications.

A license, COR, or MMD shall not be reissued to an applicant if, during the re-application process, a fraudulent application is discovered. A license, COR, or MMD renewed by way of a fraudulent application may not be declared "null and void". Instead, the mariner must be provided with an administrative hearing conducted under 46 CFR Part 5 where the credential may be revoked for misconduct. Such cases should be referred to the SIO.

C. Evaluation Of Records Of Convictions.

This section addresses various factors to consider when evaluating an applicant who has a criminal record, including DWI/DUI convictions. If the applicant holds or is eligible to renew a license, COR or MMD the SIO should be advised. The application process is then put on hold until the SIO advises on the outcome of an investigation. This requires close liaison between the Coast Guard Chief, Regional Exam Center and the SIO. If the application is for an initial license, COR, or MMD, the process is also placed on hold pending the outcome of a criminal and NDR records review by the REC.

1. Types Of Convictions.

Criminal convictions may serve as the basis for disqualifying an applicant for a license, COR or MMD. Some examples of criminal convictions that may disqualify an applicant include convictions for violations of national security laws; capital offenses such as first degree murder; armed robbery; rape; assault with a deadly weapon; embezzlement; other serious felony crimes; and crimes of moral corruption (see section D). Other criminal convictions may also serve as grounds for disqualifying an applicant for a license, COR or MMD for a reasonable period of time (assessment period). During the assessment period the applicant is given the opportunity to demonstrate rehabilitation. A reasonable period of time is generally a number of years from the date of conviction or release from jail and/or supervised probation, whichever is later. (see section D).

2. Number Of Convictions.

Multiple criminal convictions may be more of an indication of an applicant being unqualified than convictions for multiple criminal charges arising from a single criminal incident. In judging multiple convictions, care should be used to discern if the convictions arise from multiple charges for a single incident or numerous incidents of criminal activity or over a long period. A single incident can result in multiple convictions for different crimes. Convictions for robbery, drug possession, assault and rape may stem from one event. Closely related to multiple convictions for a single incident is the concept of repeat offenders. Persons with a long string of criminal convictions, particularly for such serious crimes as murder, theft, robbery or burglary, sodomy or even less serious crimes and violations showing a flagrant disregard for the rules of an orderly society are unsuitable to hold a license, COR or MMD. Such persons, by their habits of life, have demonstrated that they cannot be trusted by society in general; thus, absent suitable evidence of rehabilitation, they certainly cannot be entrusted to perform the duties of a merchant mariner.

3. Recency Of Convictions.

Some persons rehabilitate themselves after conviction and become worthy of the trust required to hold a license, COR or document. A lack of recent convictions since any period of incarceration may be evidence of rehabilitation. However, generally, an assessment period should not be less than one year.

4. Additional Evidence Of Rehabilitation Or Reform.

In addition to time without subsequent convictions, there are other acceptable ways to demonstrate rehabilitation or reform. One of the most common is through the use of character references. These references should be carefully considered before being accepted. Parole officer recommendations may be considered. Character references which indicate knowledge of the applicant's convictions and attest to a demonstrated change in character or habits of life, with examples of how the applicant's behavior has changed, are generally more worthy than those which simply extol the applicant's virtues, e.g., those written without any knowledge of the applicant's history. Given the role drugs and alcohol often play in criminal activity, long-term participation in Alcoholics Anonymous, Narcotics Anonymous or other similar programs with support groups may be accepted as some evidence of rehabilitation or reform.

5. Relevance Of The Offense To The License, COR, or MMD Applied For.

Special relevance resides in the presence or absence of opportunity for the holder of a license, COR, or MMD to repeat their previous crimes while on the job. For example, a conviction for drug trafficking is particularly relevant when an applicant has requested a license, COR or MMD. Having a seafarer's document presents the opportunity to smuggle and traffic in controlled substances. This type of activity could also lead to impairment of the seafarer caused by the use of a controlled substance and endanger life or property at sea.

6. Incarceration.

A period of time without conviction is evidence of reform only when there is opportunity to demonstrate a rehabilitated life style. Time in prison will not count toward any of the assessment periods suggested in these guidelines. A period of time to interact with society is necessary for a person to prove they can successfully abide by society's laws and regulations. However, consideration should also be given to bad acts while in prison. Prisoners commit crimes while incarcerated. Such a record of behavior may be considered as evidence of a lack of rehabilitation. Time in prison will not be considered for any assessment periods required before issuing a license, COR or MMD.

7. Probation.

An applicant's parole/probation status is a factor in deciding if the applicant is qualified. An applicant in a closely supervised parole/probation status is not as trusted by society as is someone on unsupervised parole/probation. Time on supervised parole/probation should be given less weight and may be excluded entirely from any assessment period. However, the OCMI may include periods of probation and parole in the assessment periods with a letter of recommendation from a parole or probation officer. 46 CFR Parts 10.201(h)(2) and 12.02-4(c)(2) have been recently revised to clarify when assessment periods begin. Time on parole/probation may be considered for evidence of rehabilitation if all the conditions of the parole or probationary period were properly fulfilled. Conditions of the parole/probation should also be examined by contacting the appropriate court officer. Frequently conditions of parole/probation prohibit the individual from leaving the jurisdiction of the state or district in which the individual was convicted. This prohibits employment that is inconsistent with the conditions of the parole/probation.

D. Evaluating Criminal Behavior.

The following guidelines should be applied when evaluating applicants with criminal convictions. When evaluating the criminal convictions record, remember they had their day in court, defended by legal counsel. Do not allow yourself to be placed in the position of retrying the evidence that led to the conviction. The applicant will generally try to minimize the outcome of the conviction by introducing their perception of why they were convicted. This view is self-serving. Convictions must be taken at face value. In most cases you should insist upon a copy of the court's Decision and Order (D&O) or its equivalent. The D&O will show the charges and their outcome. Some will be more detailed, giving a short background of the case. When evaluating the qualifications of an applicant for a license, COR or MMD use the factors of section 3.C. and 3.A.4. as your guide. The assessment periods listed in 46 CFR Part 10.201(h) and 12.02-4(c) respectively, should be considered as suggested minimums and maximums. The evaluator must use judgment in deciding reasonable assessment periods.

E. Dangerous Drug Offenses.

46 U.S.C. 7503 gives the Coast Guard authority to disqualify an applicant for a license, COR or MMD to any individual who has been convicted of a drug law violation within ten years preceding the date of application or who has ever been a user of or addicted to the use of a dangerous drug, including marijuana. However, the authority to disqualify an applicant is qualified in several ways. First, the statutory time limit on considering a conviction of this sort is a maximum of ten years from the date of the conviction. Second, an applicant who has been addicted to or a user of a dangerous drug may be evaluated if the applicant provides satisfactory proof of cure.

1. Drug Use Or Addiction.

Drug users must present strong evidence of reform/rehabilitation and a change in life-style in order to be considered for a license, COR or MMD. To show cure, as determined in the Vice Commandant's Decision on Appeal No. 2535 (SWEENEY), the RECs should consider the following information when reviewing applications of those who have been addicted to, or users of, dangerous drugs.

- a. Medical evidence of a cure. Cure is shown by completion of a bona fide drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a government agency, such as a state drug/alcohol abuse administration or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO); and
- b. Evidence that following the successful completion of the drug rehabilitation program, the applicant has demonstrated a complete non-association with drugs for a minimum of one year (SWEENEY, supra) or in accordance with present regulatory time requirements (46 CFR, part 5). This includes participation in an active drug abuse monitoring program which incorporates random, unannounced testing during that year.

2. Drug Convictions.

An applicant with one conviction, which is over a year old, for a small amount of marijuana may be eligible for a license or document before the expiration of a minimum assessment period. As an example, if the applicant completed any assigned periods of parole or incarceration and the conviction is over one year old with no other involvement (e.g., trafficking) the OCMI may consider issuing a license before the minimum assessment period has elapsed. Certain criteria must be met before this can take place. The OCMI must determine the applicant's involvement in the conviction. If the applicant was convicted of possession of a small amount of marijuana but did not use the drug and can furnish satisfactory proof from a drug counselor that the individual did not and is not using drugs, then the OCMI may issue the license or document. If an applicant has multiple convictions for drugs other than marijuana or trafficking, especially if the convictions are maritime related, the denial could extend to the full ten years. The length of time will be a function of the number and seriousness of the convictions and their relationship to the license, COR or MMD applied for.

3. Drug Arrests Without Convictions.

Absent a conviction, admission of use or admission of addiction to dangerous drugs may be grounds for disqualifying an applicant for a license, COR or MMD. A person may truthfully answer "no" to questions on the application concerning convictions, however, an arrest(s) may be an indicator that the applicant is or was a user of the dangerous drugs indicated on the arrest record. As such, they may prompt the evaluator to ask further questions to determine if the applicant was or is a drug user. A delay in the issuance of a license or document pending the results of a criminal records check may be encountered.

F. Alcohol Related Convictions.

Convictions for driving while intoxicated/driving under the influence are considered to be more than minor traffic violations and reflect unfavorably on the applicant's suitability to be entrusted with the duties and responsibilities of the license. They must be noted in Section VI of the application, or by a separate notation on the application. Applicants indicating conviction(s) of vehicular crimes shall be assigned minimum or maximum assessment periods in accordance with the regulations.

1. Driving While Intoxicated/Driving Under The Influence Of Intoxicants (DWI/DUI).

DWI/DUIs are serious matters and may indicate that an applicant should not be entrusted with the duties and responsibilities of a license, MMD or COR. Each applicant must be evaluated on an individual basis to determine if the DWI/DUI conviction(s) is indicative of a deeper problem affecting the applicant's qualification to hold a license, COR or MMD, or is the result of a single isolated failure of judgment. In evaluating applicants with DWI/DUI convictions, the evaluator must qualify the applicant based on the convictions, taking into consideration the number and severity of the convictions, recency of the convictions and evidence of rehabilitation/reform. The following guidelines offer additional factors for evaluating the qualification of an applicant with DUI/DWI convictions.

a. Single Conviction.

A single DUI/DWI conviction within the past three years may indicate the early stage of a developing, long-term problem, or that the individual having a well-developed problem was only caught once, or that this was an isolated incident of poor judgment. The evaluator should attempt to identify which of the possible scenarios is applicable.

- (1) In cases where a long-term problem is developing and the conviction is over one year old, but less than three, the application should be processed unless a suspension or revocation is still in effect for a state driver's license. The applicant should be put on notice, in a letter, that their license may be in jeopardy.
- (2) If the conviction is more than three years old, a conviction clearance is normally not necessary.
- (3) If the conviction is less than one year old, the application should be denied for a period of time sufficient to see if another incident will occur (at least one year from the date of the conviction).

b. Multiple Conviction.

For multiple convictions, the most recent being more than three years old, the application should be processed. The applicant should be put "on notice", in a letter, that further occurrences may jeopardize their license. If the applicant has multiple convictions, with any within the last three years, the evaluator may consider disqualifying an applicant for the license for at least one year since the last conviction and at least three years since the second most recent conviction unless satisfactory cure is shown.

2. Rehabilitation Evidence.

Acceptable evidence of rehabilitation/reform include the following: successful completion of an alcohol abuse treatment or education program; long term active membership in therapy, such as Alcoholics Anonymous; or positive character references from responsible persons who can attest to the applicant's long period of being sober and reliable and outlining the applicant's change in behavior since their offense.

G. Notice of Denial.

In all cases when an applicant is denied a license, COR or MMD, they must be notified by letter. The letter must include the reason for the denial, any remedy (e.g. assessment period, time off parole/probation, etc.), the right to appeal and the appeal process.)